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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable David S. Maxey
Attorney for Plumbers & Gas
Fitters Examining Board
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The Zinszer Building
2117 Second Avenue North
Birmingham, Alabama 35203-3753

*See **McBurney v. Young**, 133 S. Ct. 1709 (U.S. 2013) where U.S. Supreme Court upheld Virginia's access to open records to citizens of Virginia. Also, read section 36-12-40 of the Code of Alabama to limit access of public records in Alabama to Alabama citizens.*

Plumbers and Gas Fitters Examining Board
– Public Records

The names and mailing addresses of applicants for the plumbers and gas fitters examination are public records and must be released to an out-of-state business. Sensitive or confidential information in the application that, if released, would result in undue harm or embarrassment to the applicant may be redacted by the Board before release.

Dear Mr. Maxey:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Plumbers and Gas Fitters Examining Board.

QUESTIONS

1. Are the names, mailing addresses, and telephone numbers submitted to the Board by applicants for plumbers and gas fitters examinations "public records" or "public writings" subject to inspection by the public under section 36-12-40 of the Code of Alabama?
2. Does an out-of-state business have standing as a "citizen" to inspect public records of the State of Alabama under section 36-12-40?

3. Does the use of the names, mailing addresses, and telephone numbers of all applicants for plumbers and gas fitters examinations by an out-of-state business for the purpose of contacting the applicants to offer and sell pre-examination preparation materials constitute a legitimate or proper purpose for requesting the information under section 36-12-40?

4. Under section 36-12-40 and the "rule of reason" or "balancing of interest" test established by the Alabama courts, is the Board required to make available to the out-of-state business the names, mailing addresses, and telephone numbers of all applicants for plumbers and gas fitters examinations prior to each quarterly examination when considered in light of the privacy concerns of the applicants, the limited resources of the Board, and the lack of usefulness of the information for a public purpose of the State of Alabama?

FACTS, LAW, AND ANALYSIS

Your request states:

The Alabama Plumbers and Gas Fitters Examining Board (the "Board") is a state agency created and functioning pursuant to section 34-37-1, *et seq.*, of the Code of Alabama, as amended. The Board examines, certifies, and regulates plumbers, gas fitters, and medical gas piping fitters on a statewide basis. *Id.*

The Board received a written request from an out-of-state business seeking personal information on all persons who have submitted applications to take certification examinations conducted by the Board. The exam applicants consist primarily of existing certified journeymen and registered apprentices. The request seeks the names of the applicants, their mailing addresses, and their telephone numbers. The out-of-state business has told the Board that it plans to contact

the applicants for the purpose of offering and selling the applicants pre-examination preparation materials.

One concern of the Board is whether the release of the information requested would violate any privacy rights of the applicants who are not yet certified. The Board knows that the out-of-state business will be contacting the applicants without the applicants' permission, and the Board does not have the means or the resources to prevent the out-of-state business from distributing, publishing, or selling the personal information of applicants to other businesses which may be interested in using the information to contact the applicants.

A second concern is that repeated requests for personal information of applicants for examinations could overburden the Board's staff. The out-of-state business has requested that the names, mailing addresses, and telephone numbers of the applicants be released to them on a continuing quarterly basis, prior to the Board's quarterly exam schedule. The Board conducts examinations on a quarterly basis for the journeyman and masters certifications. Over the past four quarters, the Board has tested a total of 552 persons for journeyman certification and 250 persons for masters certification. There are also approximately 40-50 additional applicants who do not show for these tests. The Board has limited resources and questions whether it should use these limited resources to respond to requests which appear to be for a private, as opposed to a public, benefit and purpose.

A third concern is that the Board's release of the applicants' personal information to the out-of-state business may be seen as promoting or supporting private enterprises that will use the information for pecuniary gain. Although the Board currently publishes information on certified persons on its website that may be useful for private, pecuniary purposes, the information is published solely for the purpose of informing and assisting the Alabama public. If the Board considers personal information of pre-certified

applicants not useful to the public, or if information is of a private concern, it is not published.

The Board currently publishes on its website information it has deemed helpful and pertinent in pursuit of its statutory authority and duties. The website contains information on currently certified master plumbers and gas fitters, which presently number about 7,300. The information published on the website on certified master plumbers and gas fitters includes the master's address and phone number, the address and phone number of the master's employer, the class of certification, and the expiration date of the certification. In order to obtain this information from the website, the user may search master lists by county and city, or the user may search by the name or social security number of the master. As such, a member of the public who wishes to check the certification status of a particular master can obtain this information on the website.

The Board does not publish information on its website on certified journeymen (approximately 6,015) or registered apprentices (approximately 9,953) due to privacy concerns, limited resources, and the lower likelihood of any foreseeable public benefit or purpose. Because Alabama law, the Board's regulations, and most county and municipal inspection offices require certified masters to supervise the plumbing and gas fitting work and apply for local work permits, the Board believes the publication of the certified masters information is of greater benefit to the citizens of Alabama than that of journeymen and apprentices who serve under a master.

Further, the Board considers an applicant's personal information submitted to it prior to the person taking and passing the certification examination to be of no public benefit.

As you mentioned in your request, the Alabama statute governing the release of public writings is section 36-12-40 of the Code of Alabama, which provides, in pertinent part, as follows:

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise provided by statute.

ALA. CODE § 36-12-40 (1991).

Although the statute does not define "public writing," the Supreme Court of Alabama has provided guidance stating that a "public writing" is a record that is reasonably necessary to record the business and activities required of the public official so that the status and condition of such business and activities can be known by our citizens. *Stone v. Consolidated Publishing Co.*, 404 So. 2d 678 (Ala. 1981). The Court, in *Stone*, recognized some areas of exceptions that may not be subject to public disclosure, such as recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records, the disclosure of which would be detrimental to the best interests of the public. The presumption is in favor of public disclosure, and the burden of showing that a record is not open to the public falls upon the agency making the assertion. *Chambers v. Birmingham News Co.*, 552 So. 2d 854 (Ala. 1989). Exceptions must be allowed only "where it is readily apparent that disclosure would result in undue harm or embarrassment to an individual, or where the public interest would clearly be adversely affected when weighed against the public policy considerations suggesting disclosure." *Id.* at 855.

This Office has previously held that the licensure applications for nursing home administrators filed with the Board of Examiners of Nursing Home Administrators are public records. Opinion of the Attorney General to Honorable Bill R. Hatley, Chairman, Alabama Board of Examiners of Nursing Home Administrators, dated January 15, 1992, A.G. No. 92-00106. This Office has also opined that the names and resumes of applicants for various public positions are matters of public record and should be made available to the public. Opinions of the Attorney General to Honorable Bobby E. Denton, Member, Alabama State Senate, dated March 20, 1991, A.G. No. 91-00189 and to Honorable James D. Hughston, Attorney, Colbert County, dated October 24, 1990, A.G. No. 91-00032. If the applications of persons applying for licensure are public records, clearly the names and addresses of the applicants are available to the public. Sensitive or confidential information that, if released, would result in undue harm or embarrassment to an individual applicant may be redacted by the Board before the application is released. This is a factual determination that must be made by the Board.

Neither this Office nor the courts have restricted citizens who have access to public records to mean only in-state citizens. Accordingly, it is the opinion of this Office that an out-of-state business is a member of the public that has standing to inspect our state's public records. The Board has no duty other than to make the records available for inspection during normal business hours. The Board may charge a reasonable fee for making copies of the records.

The fact that the business wishes to use this information for profit does not affect the business's right to inspect the public records. The Alabama Court of Civil Appeals stated:

Section 36-12-40 makes no distinction between disclosure for profit or otherwise. There is no exception under § 36-12-40 disallowing one to inspect or copy public writings simply because one desires to use such for personal gain.

Walsh v. Barnes, 541 So. 2d 3, 35 (Ala. Civ. App. 1989).

In *Blankenship v. City of Hoover*, 590 So. 2d 245 (Ala. 1991), the Supreme Court of Alabama provided the following summary of Alabama law concerning a citizen's right of access to public records:

It is not the unqualified [absolute] right of every citizen to demand access to, and inspection of the books or documents of a public office, though they are the property of the public, and preserved for public uses and purposes. . . . [The] individual who claims access to the public records and documents, . . . can properly be required to show that he has an interest in the document which is sought, and that the inspection is for a legitimate purpose.

The right of free examination is the rule and the inhibition of such privilege when the purpose is speculative or from idle curiosity, is the exception.

* * *

The public generally has the right of the reasonable and free examination of public records required by law to be kept by the public officials, except in instances where the purpose is purely speculative or

from idle curiosity, or such as to unduly interfere or hinder the discharge of the duties of such officer.

* * *

Absent legislative action, . . . the judiciary must apply the rule of reason. Recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records, the disclosure of which would be detrimental to the best interest of the public, are some of the areas which may not be subject to public disclosure. The Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference.

590 So. 2d at 247-248; *see also Stone v. Consolidated Pub. Co.*, 404 So. 2d 678 (Ala. 1981); *Holcombe v. State ex rel. Chandler*, 240 Ala. 590, 200 So. 739 (Ala. 1941).

In *Blankenship*, the Court held that the City of Hoover could require request forms for public documents which required the requestor to provide information that "would enable the City to assure that the requested information was for a legitimate or proper purpose and would allow the City to maintain the integrity of its records in a practical and workable manner, without undue interference." 590 So. 2d at 250. The Court refused to enjoin the City of Hoover from requiring Hoover citizens to state a reason why inspection or copying of records is requested. *Id.* at 246.

In the matter at hand, the out-of-state business plans to use the names, mailing addresses, and telephone numbers of applicants to contact the applicants to offer and sell pre-examination preparation materials. The release of such information to the business is not for speculative or idle curiosity. The fact that the information will, in all likelihood, be used for a private, pecuniary purpose does not restrict the inspection of the records.

CONCLUSION

It is the opinion of this Office that the Board is required to release the names and mailing addresses of applicants to the out-of-state business. Sensitive

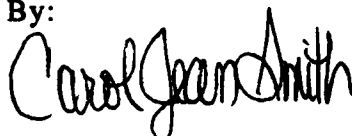
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or confidential information in the application that, if released, would result in undue harm or embarrassment to the applicant may be redacted by the Board before release.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:

A handwritten signature in black ink, appearing to read "Carol Jean Smith". The signature is written in a cursive, flowing style.

CAROL JEAN SMITH
Chief, Opinions Division

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